IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1098 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAYATRIBEN RATILAL DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1098 of 1994

MR YOGESH S LAKHANI for Petitioner No. 1-4

MS REETA CHANDARANA, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 28/06/2004

ORAL JUDGEMENT

1. Gayatriben Ratilal Dave and others, petitioners have filed this petition with a prayer that the petitioners are entitled to continue in service as full time lecturers on their respective posts and they are entitled to vacation salaries as per rules. They further prayed that the respondents be directed not to terminate the services of the petitioners and further direct them to pay vacation salaries and other benefits to the petitioners. They further prayed that the action of the respondents in terminating the services of the petitioners is illegal, arbitrary and violative of

Articles 14 and 16 of the Constitution of India.

2. The aforesaid petition was filed somewhere in January 1994 and on 31st January, 1994, this Court issued rule and also granted interim relief by restraining the respondents from terminating the services of the petitioners till the availability of the candidates through GPSC or until further orders.

3. It may be noted that there are four petitioners namely Gayatriben Ratilal Dave, Vandnaben L.Makwana, Shardaben B.Jadav and Kum. Niyatiben H.Mistri. The facts of all the four petitioners are identical, I take the facts of petitioner No.1 Gayatriben Ratilal Dave.

4. It is a case of the petitioners that petitioner No.1 has been appointed by the respondent No.3 as Part-time Lecturer on ad-hoc basis w.e.f. 19.8.92. Then at the end of the term, the services have been terminated of the petitioner No.1 alongwith other Lecturers by an order dated 20.10.92. Then again by an order dated 11.11.92 she is re-appointed. Again the services of the petitioner No.1 has been put to an end w.e.f. 13.4.1992. Thereafter again the petitioner No.1 came to be re-appointed by an order dated 15.10.93. Again the services of the petitioner No.1 has been terminated w.e.f. 6.11.93. Thereafter again the petitioner No.1 has been re-appointed by an order dated 26.11.93 till the the end of term. Similar facts are of the petitioners No. 2, 3 and 4.

4.1 It is a case of the petitioners that the petitioners were called for the interview and the selection committee declared the petitioners successfully and thereafter the appointment orders were issued to the petitioners. Their appointments have been fixed for the terms of the various academic years. The bare perusal of the various appointment orders shows that there is a condition incorporated that the appointments are on ad-hoc basis till the availability of regular candidates sponsored by GPSC. Despite this, the services of the petitioners were terminated on the ground that their services were on ad-hoc appointment.

4.2 It is a case of the petitioners that they are relieved from the services at the end of academic term and thereafter the respondents are giving them appointments at the beginning of the second term so that the petitioners may not acquire any status. It is further submitted that their services shall be put to an end at the end of the term and therefore it is submitted

that since the posts of Lecturers are available, the respondent can easily accommodate the petitioners. So far as the posts of the petitioners are concerned, there is no advertisement given by the GPSC or requisition is sent by the Government to the GPSC for filling up the posts on permanent basis since last more than four years.

4.3 It is a case of the petitioners that this practice has been adopted by the respondent in order to avoid the liability of payment of vacation salary etc.

5. Ms.Bhavika Kotecha, learned advocate for Mr.Yogesh Lakhani, learned advocate appeared on behalf of the petitioners. She has also reiterated the aforesaid contention that petitioners though they were appointed on ad-hoc basis but their services were terminated on the ground of vacation salary otherwise they were deemed to be continued in service.

6. On behalf of respondents - State of Gujarat, Ms.Reeta Chandarana, learned AGP has appeared and relied upon one affidavit of one Shri Shantilal B.Dhobi, Deputy Director of Higher Education (Establishment), Commissioner of Higher Education Office, Gujarat State. She has also relied upon another affidavit of one Shri M.G.Sharma, Senior Superintendent (Estt), Commissioner of Higher Education Office, Gandhinagar, dated 2nd September, 1995.

6.1 It is a case of the respondents that the Government has framed recruitment rules under Article 309 of the Constitution of India, called the Lecturers in the Government Arts, Science and Commerce College, Recruitment Rules, 1980, and since then the said rules are in operation without any amendment therein till today. The said rules govern the process of recruitment on the post of Lecturer in Government Colleges.

6.2 It is a case of the respondents that the petitioners are working in Government Colleges on ad-hoc and temporary basis on the post of Lecturer and for getting regular appointment, the petitioners have to undergo the selection process, prescribed under the rules. It has been further stated that for regular appointment to the said post, GPSC gives advertisement inviting applications from the eligible candidates and after considering suitability of the eligible candidates, the GPSC prepares select list of such eligible candidates and recommends names to respondent No.1. It has been further stated that the Education Department thereafter gives appointments and the detailed posting orders are

being given by Commissioner of Higher Education Office to the candidates who are recommended by the GPSC. As per the said Rules, such candidates have to undergo probation period of two years, within which such selected candidates have to pass an examination in Hindi or Gujarati or both in accordance with Rules prescribed by the Government in the behalf from time to time.

6.3 It is submitted that the petitioners have never undergone the aforesaid selection process, but in fact, the petitioners were appointed to the post which they are holding at present on purely ad-hoc and temporary basis and re-appointed for such from time to time, on commencement of each academic term. It has been stated that such ad-hoc and temporary appointments of the petitioners cannot be said to be regular appointment as mentioned in the petition, because the said ad-hoc and temporary appointments were not in accordance with the recruitment rules framed for the post of Lecturer. Therefore, the say of the petitioners that they were given regular appointments to the post which they were holding, is absolutely false.

6.4 It has been further stated that the aforesaid selection process through GPSC is a lengthy process and time consuming. Even after the select list is prepared by the GPSC, the procedure for appointment takes time as the selected candidates have to undergo certain inquiries, in which considerable time is consumed. Due to the aforesaid reason, several post which have fallen vacant, could not be filled-in by such selected candidates within time and the Government colleges as well as the students has to suffer due to non-availability of such selected candidates. Therefore, with a view to see that the institutions do not suffer and academic career of the students is not jeopardised, the Lecturers, are being appointed on ad-hoc and temporary basis by way of an interim arrangement to meet with the aforesaid immergent exigent and expedient situation in public interest without following the prescribed recruitment rules.

6.5 It is a case of the respondents that appointment of the petitioners are on purely ad-hoc and temporary basis upto the end of academic term by each order and therefore they have no right to get regular appointment or to continue in service even after end of the academic term nor does the petitioners become entitled to regular appointments merely because the petitioners were selected by the Local Staff Selection Committee for appointment on ad-hoc basis.

6.6 It has been further stated that if the petitioners are given appointment who are irregularly recruited/appointed, than not only such appointments will be regularised but would deprive several eligible, qualified and deserving candidates to the said post, making the provisions of Articles 14, 16 and 19 nugatory by frustrating the laudable object and purpose for which they are included in part III of the Constitution of India.

6.7 It is a case of the respondents that the names of the petitioners neither recommended by GPSC nor are they selected and appointed as per the Recruitment Rules and, therefore the candidates selected in accordance with law cannot be said to be a class similarly situated to that of the petitioners since the petitioners can be said to be persons belonging to a different class.

6.8 In view of the aforesaid affidavits by respondents, the learned AGP has also relied upon the judgment of Hon'ble Apex Court in the case of Vinodan T. and others Vs. University of Calicut and others reported in (2002) 4 SCC 726 where the scheme regarding regularisation has been discussed by Hon'ble Supreme Court. The learned AGP has also relied upon another judgment of Hon'ble Supreme Court in the case of Dr.Chanchal Goyal (Mrs) Vs. State of Rajasthan reported in (2003) 3 SCC 485 where the Hon'ble Supreme Court has held that ad-hoc appointee - such appointee, unless his initial recruitment is regularised through a prescribed agency, held, cannot be granted regularisation. In view of these two judgments, even on question of law also the petitioners are cannot be regularised in this behalf. Even on facts also as the petitioners were appointed on ad-hoc and temporary basis, they cannot be absorbed in the regular cadre.

7. The learned advocate for the petitioners has stated that there are other identical petition being SCA Nos.2085/91, 6799/93, 12555/93, 12557/93 and 12558/93 where also identical like petitioners and they have been disposed by learned Single Judge and ultimately LPA was preferred and the Division Bench has also disposed of the said LPA in this behalf. Unfortunately the learned advocate for the petitioners has not pointed out any order of the learned Single Judge as well as order of Division Bench. This Court has also tried to inquire with the office regarding identical orders passed by the above-numbered petitions but the office is not able to trace out the orders of the aforesaid petitions.

8. In view of the aforesaid absence of specific contention and the orders of this Court, this Court relied upon the affidavits as well as two judgments of the Hon'ble Apex Court and in view of the same, the petition is rejected. Rule is discharged. No order as to costs.

(K.M. Mehta, J.)

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